IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

INCOME TAX APPEAL NO. 12 of 2003

AND

INCOME TAX APPEAL NO. 13 of 2003

AND

INCOME TAX APPEAL NO. 15 of 2003

Date of decision: 14th October, 2003

For the approval of:

Hon'ble Chief Justice S.H. Kapadia.

Hon'ble Mr. Justice M.M. Ghildiyal.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

INCOME TAX APPEAL NO. 12 of 2003

The Commissioner of Income-tax,
Dehradun and another ------ Appellants

Vs.

Hyundai Heavy Industries Co. Ltd. ------ Respondent

AND

INCOME TAX APPEAL NO. 13 of 2003

The Commissioner of Income-tax,
Dehradun and another ------ Appellants

Vs.

Hyundai Heavy Industries Co. Ltd. ------ Respondent

AND

INCOME TAX APPEAL NO. 15 of 2003

The Commissioner of Income-tax,
Dehradun and another ------ Appellants

Vs.

Hyundai Heavy Industries Co. Ltd. ------ Respondent

Mr. S.K. Posti, Counsel for the Department.
Mr. O.P. Sapra, Counsel i/b Mr. V.K. Bisht, Advocate for the Assessee.

Coram: Hon'ble S.H. Kapadia, C.J.,
Hon'ble M.M. Ghildiyal, J.

Date: 14th October, 2003:

ORAL JUDGMENT :(Hon'ble S.H. Kapadia, C.J.)

1. This group of appeals raises common question of law and fact. Hence, the three appeals are decided by this common judgment.

For the sake of convenience, facts in Income Tax Appeal No. 12 of 2003 are mentioned hereinbelow:-

2. FACTS

Hyundai Heavy Industries Company Ltd., assessee, was charged with interest u/s 201(1A) of the Income Tax Act, 1961 for short payment of tax deducted at source from the salary of its employee for the assessment year 1994-95. Being aggrieved by the order of the A.O., the said assessee went in appeal to the Commissioner of Income-tax(Appeals). The order of the A.O. was confirmed the appeal was dismissed. Being aggrieved the assessee carried the matter in appeal to the Income Tax Appellate Tribunal which took the view that in the quantum appeals it has been held that free boarding on the rigs was not a perquisite u/s 17(2)(iii) and those decisions have not been challenged by the department and therefore interest u/s 201(1A) of the Income Tax Act was not leviable on Hyundai Heavy Industries Co. Ltd. Being aggrieved by the decision of the Tribunal the department has come by way of appeal u/s 260A of the Income Tax Act. In all the three appeals we are concerned with the same issue.

Assessee Co. had employed technicians on the rigs, these technicians were required to work during the ON Period continuously for 35/28 days. During this period they were given free meals and free boarding which was treated as a perquisite by the department u/s 17(2)(iii) of the Income Tax Act. Being aggrieved, the matter was carried in appeal to the Tribunal in which it was held that free meals and free boarding did not constitute a perquisite and therefore its value cannot be added to the income of the assessee. The decision of the Tribunal was not challenged by the department. However, on 27th April 1998 notice was issued u/s 201 of the Income Tax Act to M/s Hyundai Heavy Industries Co. Ltd. – assessee to show cause why interest should not be levied u/s 201(1A) of the Act from the date of deduction of TDS till payment. On that notice the A.O. passed an order on 21st July 1999 u/s 201(1A) of the Income Tax Act charging interest on M/s Hyundai Heavy Industries Co. Ltd. (employer) for short payment of TDS to the revenue on the ground that free boarding constituted a perquisite u/s 17(2)(iii) of the Income Tax Act and on that perquisite the assessee had failed to collect that tax. This decision of the department has been set aside by the Tribunal and therefore the department has come by way of appeal to the High Court u/s 260A of the Income Tax Act.

3. On the above facts two questions of law have been framed. They are as follows:

QUESTIONS:

(1) "Whether on facts and in the circumstances of the case the learned ITAT was legally justified in holding that free accommodation facility provided by the employer to its employees on board the rig in high seas cannot be construed to be perquisite?"

(2) "Whether on the facts and in the circumstances of the case the learned ITAT was legally correct in holding that no perquisite arose on account of free accommodation facility provided by the employer to its employees and the A.O. was not justified in charging interest u/s 201/201(1A) of the Income Tax Act?"

ANSWER:

For reasons given hereinafter we are answering both the questions in the affirmative i.e. in favour of the assessee and against the department.

REASONS:

We do not find any merit in this appeal filed by the department. Firstly, in the quantum appeals the Tribunal had taken the view that free boarding did not constitute a perquisite u/s 17(2)(iii). This decision of the Tribunal was not challenged by the department. Therefore, it is not open to the Tribunal to levy interest u/s 201(1A) on the employer i.e. M/s Hyundai Heavy Industries Co. Ltd. Secondly, in the judgment recently delivered by this High Court in Income Tax Appeal No. 57 of 2002 in the case of CIT Vs Sedco Forex International Drilling Co. Ltd. it has been held that free boarding and free meals given to the technicians on the rigs cannot constitute a perquisite u/s 17(2)(iii) and therefore their value cannot be added to the salary income of the technician. Consequently, the department cannot levy interest on M/s Hyundai Heavy Industries Co. Ltd. (employer) u/s 201/201 (1A) of the Income Tax Act.

For aforesaid reasons all the above three appeals are dismissed with no orders as to cost.

(M.M. Ghildiyal, J.) **(S.H. Kapadia, C.J.)**

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